

1 **KAZEROUNI LAW GROUP, APC**
2 Abbas Kazerounian, Esq. (SBN: 249203)
3 ak@kazlg.com
4 David J. McGlothlin, Esq. (SBN: 253265)
5 david@kazlg.com
6 Mona Amini, Esq. (SBN: 296829)
7 mona@kazlg.com
8 Gustavo Ponce, Esq. (SBN : 343430)
9 gustavo@kazlg.com
10 245 Fischer Avenue, Unit D1
11 Costa Mesa, California 92626
12 Telephone: (800) 400-6808
13 Facsimile: (800) 520-5523

14
15 *Attorneys for Plaintiff,*
16 Shanna Conn
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18
19 SHANNA CONN, individually and on
20 behalf of all others similarly situated,
21 Plaintiff,
22 vs.
23 I HEALTH AND LIFE INSURANCE
24 SERVICES,
25 Defendant.
26
27
28

Case No.:

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C §§ 227,
ET SEQ. (TCPA)**

DEMAND FOR JURY TRIAL

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1 INTRODUCTION

2 1. Plaintiff SHANNA CONN (“Plaintiff”), individually and on behalf of the
3 proposed Class defined below, brings this class action lawsuit challenging the unlawful
4 actions of I HEALTH AND LIFE INSURANCE SERVICES (referred to as
5 “Defendant”). Defendant negligently, knowingly, and/or willfully made unsolicited
6 telephone calls as well as placed unsolicited text messages and calls to Plaintiff and the
7 putative class on their respective cellular phones which are registered with the National
8 Do-Not Call Registry (“DNC”), all in violation of the Telephone Consumer Protection
9 Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”), and related regulations, including but not
10 limited to 47 C.F.R. § 64.1200(c). Plaintiff seeks injunctive and monetary relief for all
11 persons injured by Defendant’s unlawful conduct.

12 2. Plaintiff alleges as follows upon personal knowledge as to herself and her
13 own acts and experiences and, as to all other matters, upon information and belief
14 including investigation conducted by Plaintiff’s attorneys

15 3. This case is brought to enforce the consumer privacy provisions afforded
16 by the TCPA, a federal law that was designed to curtail abusive telemarketing practices
17 precisely like those described herein

18 4. Defendant made numerous unsolicited communications to Plaintiff’s
19 cellular telephone for the purpose of soliciting business from Plaintiff while Plaintiff’s
20 telephone number was registered with the National Do Not Call Registry.

21 5. Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §
22 64.1200(a)(2) by bombarding consumers’ mobile phones with non-emergency
23 advertising and marketing telephone calls as well as text messages without prior
24 express written consent.

25 6. The TCPA was enacted to protect consumers from unsolicited and
26 unwanted telephone calls exactly like those alleged in this case.

27 7. Plaintiff seeks an injunction requiring Defendant to cease all unsolicited
28 telephone calls and text messages to numbers on the National Do Not Call Registry, as

1 well as an award of statutory damages and treble damages (for knowing and/or willful
2 violations) for Plaintiff and members of the Class (defined below) per violation,
3 together with court costs, and reasonable attorneys' fees.

4 **JURISDICTION AND VENUE**

5 8. This Court has federal question subject matter jurisdiction over this class
6 action lawsuit pursuant to 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal
7 statute, the TCPA.

8 9. Personal jurisdiction is established because Defendant conducts business
9 in the State of California. At all times relevant herein, Defendant conducted business
10 in the State of California, and within this judicial district.

11 10. Personal jurisdiction and venue are proper in the Eastern District of
12 California pursuant to 28 U.S.C. § 1331 for the following reasons: (1) the conduct
13 complained of herein occurred within this judicial district; and (2) Defendant
14 conducted business within this judicial district at all times relevant. Specifically,
15 Defendant invaded Plaintiff's privacy by contacting Plaintiff on her cellular telephone,
16 and such conduct originated from within this judicial district.

17 11. Venue is proper in the United States District Court for the Eastern District
18 of California pursuant to 28 U.S.C. § 1331 because the conduct complained of herein
19 occurred within this judicial district and many of the acts and transactions giving rise
20 to this action occurred in this district because:

- 21 a) Defendant is authorized to conduct business in this district and has
22 intentionally availed itself of the laws and markets within this district;
- 23 b) Defendant does substantial business within this district;
- 24 c) Defendant is subject to personal jurisdiction in this judicial district
25 because Defendant has availed itself of the laws and markets within this
26 district; and,
- 27 d) the harm to Plaintiff originated from within this judicial district.

PARTIES

12. Plaintiff is, and at all times mentioned herein was, a resident of the County of Rutherford in the State of Tennessee. Plaintiff is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(39).

13. Defendant is a California company with its principal place of business in located in Fresno, California. Defendant is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(39)

14. At all times relevant herein Defendant conducted business in the State of California and in the County of Fresno, and within this judicial district

15. Whenever in this Complaint it is alleged that Defendant committed any act or omission, it is meant that the Defendant's officers, directors, vice-principals, agents, servants, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of employment of the Defendant's officers, directors, vice-principals, agents, servants, or employees.

TCPA BACKGROUND

16. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In doing so, Congress recognized that “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy....” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 § 2(5) (1991) (codified at 47 U.S.C. § 227).

17. The TCPA was designed to prevent calls and messages like the one described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

28 || 18. Specifically, the TCPA restricts telephone solicitations (*i.e.*,

1 telemarketing), as well as violations of the TCPA's National Do-Not-Call provision of
2 47 C.F.R. § 64.1200(c).¹

3 19. In enacting the TCPA, Congress intended to give consumers a choice as
4 to how creditors and telemarketers may call them and made specific findings that
5 “[t]echnologies that might allow consumers to avoid receiving such calls are not
6 universally available, are costly, are unlikely to be enforced, or place an inordinate
7 burden on the consumer.” TCPA, Pub.L. No. 102-243, § 11. Toward this end,
8 Congress found that:

9 Banning such automated or prerecorded telephone calls to
10 the home, except when the receiving party consents to
11 receiving the call or when such calls are necessary in an
12 emergency situation affecting the health and safety of the
13 consumer, is the only effective means of protecting telephone
14 consumers from this nuisance and privacy invasion.

15 *Id.* at § 12; *see also, Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
16 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional finding on TCPA's
17 purpose).

18 20. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case:

19 The Telephone Consumer Protection Act [...] is well known
20 for its provisions limiting junk-fax transmissions. A less
21 litigated part of the Act curtails the use of automated dialers
22 and prerecorded messages to cell phones, whose subscribers
23 often are billed by the minute as soon as the call is answered
24 — and routing a call to voicemail counts as answering the call.
25 An automated call to a landline phone can be an annoyance;
26 an automated call to a cell phone adds expense to annoyance.

27 22 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

28 23 21. Text messages are calls and are subject to the TCPA. *See, e.g., Campbell-
29 Ewald Co. v. Gomez*, 136 S. Ct. 663, 666 (2016); *Satterfield v. Simon & Schuster, Inc.*,
30 569 F.3d 946, 954 (9th Cir. 2009).

27 27 ¹ According to the Federal Communications Commission's website,
28 <https://www.fcc.gov/consumers/guides/wireless-phones-and-national-do-not-call-list>,
Placing telemarketing calls to wireless phones is - and always has been - illegal in
most cases.

1 22. 47 C.F.R. § 64.1200(a)(2) additionally states, with respect to
2 advertisement and telemarketing calls—of which Defendant’s texts to Plaintiff are—
3 that “[n]o person or entity may . . . [i]nitiate or cause to be initiated, any telephone call
4 that includes or introduces an advertisement or constitutes telemarketing, using an
5 automatic telephone dialing system or an artificial or prerecorded voice, to any of the
6 lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this
7 section, other than a call made with the prior express written consent of the called party
8 . . .”

9 23. 47 C.F.R. § 64.1200(f)(8) defines “prior express written consent” as “an
10 agreement, in writing, bearing the signature of the person called that clearly authorizes
11 the seller to deliver or cause to be delivered to the person called advertisements or
12 telemarketing messages using an automatic telephone dialing system or an artificial or
13 prerecorded voice, and the telephone number to which the signatory authorizes such
14 advertisements or telemarketing messages to be delivered.

15 24. As of October 16, 2013, unless the recipient has given prior express
16 written consent,² the TCPA and Federal Communications Commission (“FCC”) rules
17 under the TCPA generally:

- 18 • Prohibit solicitors from calling residences before 8 a.m. or after 9
19 p.m., local time.
- 20 • Require that solicitors provide their name, the name of the person
21 or entity on whose behalf the call is being made, and a telephone
22 number or address at which that person or entity may be contacted.
- 23 • Prohibit solicitations to residences that use an artificial voice or a
24 recording.

26 2 Prior express written consent means “an agreement, in writing, bearing the signature
27 of the person called that clearly authorizes the seller to deliver or cause to be delivered
28 to the person called advertisements or telemarketing messages using an automatic
 telephone dialing system or an artificial or prerecorded voice, and the telephone
 number to which the signatory authorizes such advertisements or telemarketing
 messages to be delivered.” 47 C.F.R. § 64.1200(f)(8).

- 1 • Prohibit any call or text made using automated telephone
2 equipment or an artificial or prerecorded voice to a wireless device
3 or cellular telephone.
- 4 • Prohibit any call made using automated telephone equipment or an
5 artificial or prerecorded voice to an emergency line (e.g., “911”), a
6 hospital emergency number, a physician’s office, a hospital/health
7 care facility/elderly room, a cellular telephone, or any service for
8 which the recipient is charged for the call.
- 9 • Prohibit autodialed calls that engage two or more lines of a multi-
10 line business.
- 11 • Prohibit unsolicited advertising faxes.
- 12 • Prohibit certain calls to members of the National Do Not Call
13 Registry.

14 25. Furthermore, in 2008, the FCC held that “a creditor on whose behalf an
15 autodialed or prerecorded message call is made to a wireless number bears the
16 responsibility for any violation of the Commission’s rules.” *In re Rules and*
17 *Regulations Implementing the Telephone Consumer Protection Act, Declaratory*
18 *Ruling on Motion by ACA International for Reconsideration*, 23 FCC Rcd. 559, 565, ¶
19 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, 2012 WL 7062748 (N.D.
20 Ill., Dec. 31, 2012). Accordingly, the entity can be liable under the TCPA for a call
21 made on its behalf, even if the entity did not directly place the call. Under those
22 circumstances, the entity is deemed to have initiated the call through the person or
23 entity.

24 26. With respect to misdialed or wrong-number calls, the FCC recently
25 clarified that “callers who make calls without knowledge of reassignment and with a
26 reasonable basis to believe that they have valid consent to make the call should be able
27 to initiate one call after reassignment as an additional opportunity to gain actual or
28 constructive knowledge of the reassignment and cease future calls to the new

1 subscriber.” *In the Matter of Rules and Regulations Implementing the Tel. Consumer
2 Prot. Act of 1991*, FCC 15–72, 30 F.C.C.R. 7961, ¶¶ 71-72 (July 10, 2015). “If this
3 one additional call does not yield actual knowledge of reassignment, we deem the caller
4 to have constructive knowledge of such.” *Id.* Thus, any second call placed to a wrong
5 number violates the TCPA.

6 27. The TCPA provides for damages in the amount of \$500 for each negligent
7 violation and treble damages of \$1,500 for each knowing or willful violation. *See* 47
8 U.S.C. § 227(b)(3).

9 **FACTUAL ALLEGATIONS**

10 28. Defendant is a health insurance sales agency providing medical plans,
11 health share co-op plans and cost management through patient advocacy.

12 29. In Defendant’s overzealous attempt to market its services, however,
13 Defendant willfully or knowingly sent (and continues to send) (a) unsolicited and
14 automated telemarketing communications without the prior express written consent of
15 the recipients and (b) unsolicited automated telemarketing text messages to persons
16 who have registered their cellular telephone number on the DNC.

17 30. Through this conduct, Defendant have invaded the privacy of Plaintiff and
18 the members of the Class.

19 31. At all times relevant, Plaintiff was a citizen of the State of Tennessee.
20 Plaintiff is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C.
21 § 153(39).

22 32. Defendant is, and at all times mentioned herein was, a company and a
23 “person,” as defined by 47 U.S.C. § 153(39).

24 33. At all times relevant Defendant conducted business in the State of
25 California and in the County of Fresno, within this judicial district.

26 34. At all relevant times, Plaintiff was assigned, and was the owner of, a
27 cellular telephone number of ending in 8999 (“Cell Phone”). Plaintiff is the sole user
28 and/or subscriber of her Cell Phone.

1 35. Defendant has made numerous telephone solicitations to Plaintiff on her
2 Cell Phone,³ from Defendant's various telephone numbers, including (615) 701-9723,
3 (615) 701-9729, (800) 323-7096, (599) 413-1248.

4 36. On August 11, 2023, Defendant called Plaintiff's Cell Phone from the
5 telephone number (615) 701-9729. Plaintiff rejected this call.

6 37. Plaintiff confused and frustrated by Defendant's call, believing—and later
7 confirming she was correct—that her Cell Phone was registered with the National Do
8 Not Call Registry, visited the National Do Not Call Registry and confirmed that her
9 Cell Phone was in fact registered with the National Do Not Call Registry.

10 38. Plaintiff's Cell Phone was registered on the National Do Not Call Registry
11 since on or about July 3, 2006.

12 39. On August 17, 2023, Plaintiff received a voice call from Defendant's
13 telephone number 615-701-9729. Plaintiff disconnected from this call and was called
14 back by an agent or representative of Defendant.

15 40. On the same day, August 17, 2023, Plaintiff received a text message from
16 the telephone number (800) 323-7096 advertising Defendant's services.

17 41. On the same day, August 17, 2023, Plaintiff received another unsolicited
18 text message from Defendant's telephone number: (559) 413-1248.

19 42. At no point did the Plaintiff provide prior express written consent for any
20 of the voice calls or telemarketing text messages Defendant sent Plaintiff.

21 43. Such calls and text messages constitute telephone solicitations pursuant to
22 47 C.F.R. § 64.1200(c), as they were an attempt to promote or sell Defendant's
23 services.

24 44. Plaintiff received numerous telephone solicitations from Defendant since
25

26 3 According to the Federal Communications Commission's website,
27 <https://www.fcc.gov/consumers/guides/wireless-phones-and-national-do-not-call-list>,
28 accessed on December 8, 2023: Placing telemarketing calls to wireless phones is - and
always has been - illegal in most cases.

1 on or around July 12, 2023, within a 12-month period, and more than 31 days after her
2 Cell Phone registration on the National Do Not Call Registry.

3 45. Plaintiff did not provide Defendant with her Cell Phone number at any
4 point in time, nor did she give permission for Defendant to call Plaintiff's Cell Phone
5 utilizing an artificial or prerecorded voice, send text messages, or make other telephone
6 solicitations, to her Cell Phone.

7 46. Plaintiff did not have an established business relationship with Defendant
8 during the time of the telephone solicitations from Defendant.

9 47. Plaintiff did not have a personal relationship with Defendant at any point
10 in time.

11 48. Plaintiff did not give Defendant prior express invitation or consent in
12 writing for Defendant to call and message Plaintiff's cellular telephone for marketing
13 or solicitation purposes.

14 49. The text message Defendant sent to Plaintiff consisted of a pre-written
15 template of impersonal text and was identical to text messages Defendant sent to other
16 consumers.

17 50. Upon information and belief, Defendant made substantially similar, if not
18 identical, unsolicited calls *en masse* to Plaintiff and thousands of other consumers who
19 were also registered with the DNC for at least 31 days prior to these unsolicited
20 telephone calls, in violation of the TCPA, including 47 C.F.R. § 64.1200(c).

21 51. Upon information and belief, Defendant sent substantially similar, if not
22 identical, unsolicited messages *en masse* to Plaintiff and thousands of other consumers
23 who were also registered with the DNC for at least 31 days prior to these unsolicited
24 text messages, in violation of the TCPA, including 47 C.F.R. § 64.1200(c).

25 52. Defendant made numerous unsolicited telephone calls to Plaintiff's Cell
26 Phone which was registered with the National Do Not Call Registry for at least 31 days
27 prior to these unsolicited telephone calls, in violation of the TCPA, including 47 C.F.R.
28 § 64.1200(c).

1 53. Defendant sent numerous unsolicited text messages to Plaintiff's Cell
2 Phone which was registered with the National Do Not Call Registry for at least 31 days
3 prior to these unsolicited text messages, in violation of the TCPA, including 47 C.F.R.
4 § 64.1200(c).

5 54. Upon information and belief, at all relevant times, Defendant failed to
6 establish and implement reasonable practices and procedures to effectively prevent
7 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
8 227(c)(5), including the Do-Not Call provision in 47 C.F.R. § 64.1200(c).

9 55. Defendant did not make the telephone solicitations for an emergency
10 purpose as defined by 47 U.S.C. § 227(b)(1)(A)(i).

11 56. Upon information and belief, Defendant did not make the telephone
12 solicitations in error.

13 57. Each of the above unsolicited telephonic communications by Defendant
14 and/or their agents violated 47 U.S.C. § 227(b)(1).

15 58. Receiving Defendant's unauthorized calls and text messages drained
16 Plaintiff's phone battery and caused Plaintiff additional electricity expenses and wear
17 and tear on Plaintiff's Cell Phone and battery.

18 59. Through this conduct, Plaintiff suffered an invasion of a legally protected
19 interest in privacy, which is specifically addressed and protected by the TCPA.

20 60. Plaintiff was personally affected because Plaintiff was frustrated,
21 distressed, disturbed, and felt harassed that Defendant and/or their agents continued to
22 make unsolicited telephone calls as well as send unsolicited and unauthorized text
23 messages to Plaintiff's Cell Phone

24 61. Defendant's telephonic communications forced Plaintiff to be deprived of
25 the privacy and utility of her cellular phone by forcing Plaintiff to ignore or reject
26 Defendant's disruptive calls, messages, dismiss alerts, and/or silence her cellular phone
27 as a result of Defendant's incessant telephone solicitations.

28 62. The TCPA was intended to give individuals control over how and where

1 they receive telephonic communications. When Defendant made the telephone
2 solicitations to Plaintiff without her consent, Defendant failed to address or respect the
3 limitations imposed by the TCPA. In doing so, Defendant invaded Plaintiff's privacy
4 and violated the spirit and intent behind the TCPA.

5 63. Defendant's violations caused Plaintiff and members of the Class to suffer
6 real and concrete harm in the form of intrusion and distraction, wasted time, wasted
7 cellular phone battery, loss of cellular phone use, and natural and foreseeable stress and
8 frustration in connection with the foregoing, all of which the TCPA was designed to
9 prevent. *See, e.g., Mey v. Got Warranty, Inc.*, No. 5:15-CV-101, 2016 U.S. Dist. LEXIS
10 84972, at *8 (N.D.W. Va. June 30, 2016) (“[S]uch calls also cause intangible injuries,
11 regardless of whether the consumer has a prepaid cell phone or a plan with a limited
12 number of minutes. The main types of intangible harm that unlawful calls cause are (1)
13 invasion of privacy, (2) intrusion upon and occupation of the capacity of the
14 consumer’s cell phone, and (3) wasting the consumer’s time or causing the risk of
15 personal injury due to interruption and distraction.”).

16 64. Through the aforementioned conduct, Defendant each repeatedly violated
17 the TCPA, 47 U.S.C. §§ 227, et seq., numerous times.

STANDING

19 65. Standing is proper under Article III of the Constitution of the United States
20 of America because Plaintiff's claims state: (a) a valid injury in fact; (b) which is
21 traceable to the conduct of Defendant; and (c) is likely to be redressed by a favorable
22 judicial decision. *See, Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016); *Lujan v.*
23 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

The “Injury in Fact” Prong

25 66. Plaintiff's injury in fact must be both "concrete" and "particularized" in
26 order to satisfy the requirements of Article III of the Constitution, as articulated in
27 *Spokeo*. *Spokeo*, 136 S.Ct. at 1547.

28 || 67. For an injury to be “concrete” it must be a *de facto* injury, meaning that it

1 actually exists. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir.
2 2012). In this case, Defendant sent numerous telephone solicitations to Plaintiff's Cell
3 Phone. Such calls and text messages are a nuisance, an invasion of privacy, and an
4 expense to Plaintiff. All three of these injuries are concrete and *de facto*.

5 68. For an injury to be "particularized" means that the injury must "affect the
6 Plaintiff in a personal and individual way." *Spokeo, Inc.*, 136 S.Ct. at 1543. In this
7 case, Defendant invaded Plaintiff's privacy and peace by calling and messaging her
8 cellular telephone, despite Plaintiff's registering her telephone number with the DNC.
9 Furthermore, Plaintiff was distracted, inconvenienced, and annoyed by having to take
10 time opening and reading the text messages, and opening up the phone to review the
11 calls. All of these injuries are particularized and specific to Plaintiff and will be the
12 same injuries suffered by each member of the putative class.

13 ***The "Traceable to the Conduct of Defendant" Prong***

14 69. The second prong required to establish standing at the pleadings phase is
15 that Plaintiff must allege facts to show that its injuries are traceable to the conduct of
16 Defendant.

17 70. The above-mentioned text messages were directly and explicitly linked to
18 Defendant. Defendant's various phone numbers from which the text messages and calls
19 originated identified the Defendant's agents as employed by "I HEALTH AND LIFE
20 INSURANCE SERVICES," the party that attempted to solicit business from Plaintiff.
21 Further on the calls Defendant identified the Defendant's agents as employed by
22 Defendant as well. These calls and text messages are the sole source of Plaintiff's and
23 the Class's injuries and directly traceable to Defendant. Therefore, Plaintiff has
24 illustrated facts that show that Plaintiff's injuries are traceable to the conduct of
25 Defendant.

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1 ***The “Injury is Likely to be Redressed by a Favorable Judicial Opinion” Prong***

2 71. The third prong to establish standing at the pleadings phase requires
3 Plaintiff to allege facts to show that the injury is likely to be redressed by a favorable
4 judicial opinion.

5 72. In the present case, Plaintiff’s Request for Relief includes a request for
6 injunctive relief and statutory damages for each call and message made by Defendant
7 and telephone calls to cellular numbers on the DNC, as authorized by statute in 47
8 U.S.C. § 227. The injunctive relief and statutory damages were created by Congress
9 and specifically redress the damages suffered by Plaintiff and the members of the
10 putative class.

11 73. Because all standing requirements of Article III of the U.S. Constitution
12 have been met, Plaintiff has standing to sue Defendant on the stated claims.

13 **CLASS ACTION ALLEGATIONS**

14 74. Plaintiff brings this action pursuant to Rule 23(b)(2) and/or Rule 23(b)(3)
15 of the Federal Rules of Civil Procedure individually and on behalf of the following
16 Class (the “Class”), which is defined as follows:

17 All persons within the United States (1) registered on the
18 National Do-Not-Call Registry for at least 31 days, (2) who
19 received more than one telephone solicitation (3) made by or
20 on behalf of Defendant, (4) for the purpose of promoting
Defendant’s goods or services, (5) within any twelve-month
period, (6) within the four years prior to the filing of the
Complaint.

21 75. Excluded from the Class are Defendant, its officers and directors,
22 members of their immediate families and their legal representatives, heirs, successors,
23 or assigns, and any entity in which Defendant has or had a controlling interest.

24 76. Plaintiff reserves the right to redefine the Class and to add subclasses as
25 appropriate based on discovery and specific theories of liability.

26 77. Further, Plaintiff and members of the Class were harmed by the acts of
27 Defendant in at least the following ways: Defendant, either directly or through its
28 agents, illegally contacted Plaintiff and the Class members via their telephones,

1 whether cellular telephones or otherwise, for solicitation purposes, thereby invading
2 the privacy of said Plaintiff and the Class members whose cellular telephone numbers
3 were on the DNC, thereby causing annoyance to Plaintiff and the Class and also
4 invading the privacy of Plaintiff and the Class. Plaintiff and the Class members were
5 damaged thereby.

6 78. Numerosity: Upon information and belief, the members of the Class are
7 so numerous that joinder of all of them is impracticable. The exact number of the
8 members of the Class is unknown to Plaintiff at this time, and can (and will) be
9 determined through appropriate discovery. However, given that, on information and
10 belief, Defendant called and sent text messages to thousands of Class members
11 nationwide during the Class Period, it is reasonable to presume that the members of the
12 Class are so numerous that joinder of all members is impracticable. The disposition of
13 the claims in a class action will provide substantial benefits to the parties and the Court.

14 79. Ascertainability: The members of the Class are ascertainable because the
15 Class is defined by reference to objective criteria. In addition, the members of the Class
16 are identifiable in that, upon information and belief, their cellular telephone numbers,
17 names, and addresses can be identified in business records maintained by Defendant
18 and/or by third parties.

19 80. Typicality: As a person who received numerous telephone solicitations
20 from Defendant within a 12-month period, who did not have an established business
21 relationship or personal relationship with Defendant, and who did not provide
22 Defendant prior express invitation or permission to receive telephone solicitations,
23 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and
24 adequately represent and protect the interests of the Class in that Plaintiff has no
25 interests antagonistic to any member of the Class.

26 81. Plaintiff's claims are typical of the claims of the members of the Class.
27 Plaintiff has had to suffer the burden and invasion of privacy of receiving unsolicited
28 calls and text messages to Plaintiff's cellular telephone from Defendant while

1 Plaintiff's Cell Phone number was registered on the National Do Not Call Registry.
2 Thus, Plaintiff's injuries are typical to Class Members.

3 82. Plaintiff's claims, and the claims of the members of the Class, originate
4 from the same conduct, practice, and procedure on the part of Defendant.

5 83. Plaintiff's claims are based on the same theories, as are the claims of the
6 members of the Class.

7 84. Plaintiff and Class Members were harmed by the acts of Defendant in at
8 least the following ways: Defendant harassed Plaintiff and Class Members by illegally
9 call and sending text messages to their cellular phones without prior express consent
10 while they were registered on the National Do Not Call Registry. Plaintiff and the Class
11 were damaged thereby.

12 85. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
13 the interests of the members of the Class with whom Plaintiff is similarly situated, as
14 demonstrated herein. Plaintiff acknowledges that Plaintiff has an obligation to make
15 known to the Court any relationships, conflicts, or differences with any Class Member.
16 Plaintiff's interests in this matter are not directly or irrevocably antagonistic to the
17 interests of the members of the Class. Plaintiff will vigorously pursue the claims of the
18 members of the Class. Plaintiff has retained counsel experienced and competent in class
19 action litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules
20 governing class action discovery, certification, and settlement. In addition, the
21 proposed class counsel is experienced in handling claims involving consumer actions
22 and violations of the TCPA. Plaintiff's counsel will assert, protect, and otherwise
23 represent the members of the Class. Plaintiff has incurred, and throughout the duration
24 of this action, will continue to incur costs and attorneys' fees that have been, are, and
25 will be, necessarily expended for the prosecution of this action for the substantial
26 benefit of each Class Member.

27 86. Predominance: The questions of law and fact common to the members of
28 the Class predominate over questions that may affect individual members of the Class.

1 The elements of the legal claims brought by Plaintiff and Class Members are capable
2 of proof at trial through evidence that is common to the Class rather than individual to
3 its members.

4 87. Commonality: There are common questions of law and fact as to all
5 members of the Class, including but not limited to the following:

- 6 a. What is Defendant's conduct, pattern, and practice as it pertains to making
7 advertisement and telemarketing calls;
- 8 b. What is Defendant's conduct, pattern, and practice as it pertains to
9 delivering advertisement and telemarketing text messages;
- 10 c. Whether, within the four years prior to the filing of this Complaint,
11 Defendant or its agents made more than one call to the members of the Class
12 whose telephone numbers were on the DNC;
- 13 d. Whether, within the four years prior to the filing of this Complaint,
14 Defendant or its agents sent more than one text message to the members of the
15 Class whose telephone numbers were on the DNC;
- 16 e. Whether Defendant's conduct violated the TCPA;
- 17 f. Whether Plaintiff and the Class members were damaged thereby, and the
18 extent of damages for such violation; and
- 19 g. Whether Defendant should be enjoined from engaging in such conduct in
20 the future.

21 99. Superiority: A class action is superior to all other available methods for
22 the fair and efficient adjudication of this matter because:

- 23 • If brought and prosecuted individually, the claims of the members of the
24 Class would require proof of the same material and substantive facts.
- 25 • The pursuit of separate actions by individual members of the Class would,
26 as a practical matter, be dispositive of the interests of other members of the Class,
27 and could substantially impair or impede their ability to protect their interests.
- 28 • The pursuit of separate actions by individual members of the Class could

1 create a risk of inconsistent or varying adjudications, which might establish
2 incompatible standards of conduct for Defendant.

3 • These varying adjudications and incompatible standards of conduct, in
4 connection with presentation of the same essential facts, proof, and legal
5 theories, could also create and allow the existence of inconsistent and
6 incompatible rights within the Class.

7 • The damages suffered by each individual member of the Class may be
8 relatively modest, thus, the expense and burden to litigate each of their claims
9 individually make it difficult for the members of the Class to redress the wrongs
10 done to them.

11 • Absent a class action, most Class Members would likely find the cost of
12 litigating their claims prohibitively high and would therefore have no effective
13 remedy at law.

14 • The pursuit of Plaintiff's claims, and the claims of the members of the
15 Class, in one forum will achieve efficiency and promote judicial economy.

16 • There will be little difficulty in the management of this action as a class
17 action.

18 100. Defendant has acted or refused to act on grounds generally applicable to
19 the members of the Class, making final declaratory or injunctive relief appropriate.

20 101. Plaintiff and the members of the Class have all suffered irreparable harm
21 as a result of the Defendant's unlawful and wrongful conduct. Absent a class action,
22 the Class will continue to face the potential for irreparable harm. In addition, these
23 violations of law will be allowed to proceed without remedy and Defendant will likely
24 continue such illegal conduct. Because of the size of the individual Class member's
25 claims, few, if any, Class members could afford to seek legal redress for the wrongs
26 complained of herein.

27 102. A class action is a superior method for the fair and efficient adjudication
28 of this controversy. Class-wide damages are essential to induce Defendant to comply

1 with applicable law. The interest of Class members in individually controlling the
2 prosecution of separate claims against Defendant is small because the maximum
3 statutory damages in an individual action for violation of privacy are minimal.
4 Management of these claims is likely to present significantly fewer difficulties than
5 those presented in many class claims.

6 103. Plaintiff and the Class Members have all suffered and will continue to
7 suffer harm and damages as a result of Defendant's unlawful conduct.

8 104. This suit seeks only damages and injunctive relief for recovery of
9 economic injury on behalf of Class Members and it expressly is not intended to request
10 any recovery for personal injury and claims related thereto.

11 **COUNT I**

12 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

13 **47 U.S.C. §§ 227, ET SEQ.**

14 105. Plaintiff re-alleges and incorporates by reference each preceding
15 paragraph as though fully set forth herein.

16 106. Defendant and/or its agents placed unsolicited telephone calls and text
17 messages to Plaintiff and the other members of the Class.

18 107. Defendant made these solicitations *en masse* without the consent of
19 Plaintiff and the other members of the TCPA Class.

20 108. Defendant's conduct was negligent, willful, or knowing.

21 109. Defendant knew or should have known that it did not have prior express
22 written consent to make these telephone calls in violation of the TCPA.

23 110. Defendant knew or should have known that it did not have prior express
24 written consent to send these text messages in violation of the TCPA.

25 111. Defendant negligently, willfully, and/or knowingly allowed unsolicited
26 text messages to be sent to Plaintiff and Class members. For instance, Defendant could
27 have determined from a review of its own business records that it did not have the
28 required prior express written consent to contact Plaintiff and/or Class members, yet

1 disregarded such information and sent the illegal and unwanted solicitation text
2 messages to Plaintiff and the Class.

3 112. Defendant negligently, willfully, and/or knowingly allowed unsolicited
4 telephone calls to be made to Plaintiff and Class members. For instance, Defendant
5 could have determined from a review of its own business records that it did not have
6 the required prior express written consent to contact Plaintiff and/or Class members,
7 yet disregarded such information and made the illegal and unwanted solicitation
8 telephone calls to Plaintiff and the Class.

9 113. The foregoing acts and omissions of Defendant constitute numerous and
10 multiple violations of the TCPA, including but not limited to each and every one of the
11 above-cited provisions of 47 U.S.C. §§ 227, *et seq.*

12 114. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1). As a result of
13 Defendant's violations, Plaintiff and each of the Class Members are entitled to an award
14 of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47
15 U.S.C. § 227(b)(3)(B) and an award of \$1,500.00 in statutory damages for each and
16 every willing or knowing violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.
17 § 227(b)(3)(C).

18 115. Plaintiff and the Class members are also entitled to and do seek injunctive
19 relief prohibiting Defendant and/or its affiliates, agents, and/or other persons or entities
20 acting on Defendant's behalf from violating the TCPA, 47 U.S.C. § 227, by making
21 telephone calls, as well as sending text messages, except for emergency purposes, to
22 any cellular telephone numbers registered on the DNC in the future.

23 116. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §
24 64.1200(a)(2) by making advertising and marketing calls to Plaintiff's cellular
25 telephone number without prior express written consent.

26 117. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §
27 64.1200(a)(2) by sending advertising and marketing texts to Plaintiff's cellular
28 telephone number without prior express written consent.

118. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(2), Plaintiff, and the members of the Class, are entitled to damages in an amount to be proven at trial.

119. Plaintiff also seeks an award of attorneys' fees and costs on behalf of Plaintiff and the Class.

COUNT II

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT REGARDING THE NATIONAL DO-NOT CALL REGISTRY

47 C.F.R. § 64.1200(c)

120. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

121. Plaintiff and members of the Class received more than one marketing call within a 12-month period, sent by or on behalf of Defendant, for the express purpose of marketing Defendant's goods and/or services without their written prior express consent.

122. Plaintiff and members of the Class received more than one marketing text message within a 12-month period, sent by or on behalf of Defendant, for the express purpose of marketing Defendant's goods and/or services without their written prior express consent.

123. At all relevant times, Defendant knew or should have known that its conduct as alleged herein violated the TCPA.

124. Defendant made unsolicited and unauthorized telephone calls to the cellular telephones of Plaintiff and the Class members, cellular telephones which were registered with the National Do-Not Call Registry, for the purpose of marketing goods and/or services to Plaintiff and the Class.

125. Defendant sent unsolicited and unauthorized text messages to the cellular telephones of Plaintiff and the Class members, cellular telephones which were registered with the National Do-Not Call Registry, for the purpose of marketing goods

1 and/or services to Plaintiff and the Class.

2 126. Defendant knew that it did not have prior express written consent to make
3 these calls, and knew or should have known that it was making calls to cellular numbers
4 on the National Do-Not Call Registry in violation of the TCPA.

5 127. Defendant knew that it did not have prior express written consent to send
6 these text messages, and knew or should have known that it was sending text messages
7 to cellular numbers on the National Do-Not Call Registry in violation of the TCPA.

8 128. Defendant willfully or knowingly allowed calls to be made to Plaintiff's
9 and Class members' cellular telephone numbers on the National Do-Not Call Registry.
10 For instance, Defendant could have determined from a review of its own business
11 records and the National Do-Not Call Registry that it could not contact Plaintiff and/or
12 Class members yet disregarded such information and placed illegal and unwanted
13 solicitation telephone calls.

14 129. Defendant willfully or knowingly allowed text messages to be sent to
15 Plaintiff's and Class members' cellular telephone numbers on the National Do-Not Call
16 Registry. For instance, Defendant could have determined from a review of its own
17 business records and the National Do-Not Call Registry that it could not contact
18 Plaintiff and/or Class members yet disregarded such information and placed illegal and
19 unwanted solicitation text messages.

20 130. Defendant's telephone calls and text messages caused Plaintiff and
21 members of the Class actual harms including, but not limited to, invasion of their
22 personal privacy, aggravation, inconvenience, nuisance and disruption in their daily
23 lives, reduction in cellular telephone battery life, data, and loss of use of their cellular
24 telephones.

25 131. Because Defendant knew or should have known that Plaintiff's and Class
26 Members' cellular telephone numbers were on the National Do-Not Call Registry, the
27 Court should treble the amount of statutory damages available to Plaintiff and the other
28 members of the putative Class pursuant to § 227(b)(3) of the TCPA.

132. As a result of Defendant's violations, Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory damages, for each and every willful or knowing violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C) or in the alternative an award of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

133. Plaintiff and the Class are also entitled to and seek injunctive relief, pursuant to 47 U.S.C. § 227(c)(5)(A), prohibiting such conduct in the future.

134. Plaintiff also seeks an award of attorneys' fees and costs on behalf of Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests the following relief against Defendant:

- An order certifying this matter as a class action with Plaintiff as Class Representative, and designating Plaintiff's counsel as Class Counsel.
- Injunctive relief prohibiting Defendant from engaging in such conduct in the future pursuant to 47 U.S.C. § 227(b)(3)(A);
- Statutory damages of \$500.00 for Plaintiff and each member the Class for each and every one of Defendant's violations of 47 U.S.C. §§ 227, et seq. pursuant to 47 U.S.C. § 227(b)(3)(B);
- Statutory damages of \$1,500.00 for Plaintiff and each member the Class for each and every one of Defendant's willful or knowing violations of 47 U.S.C. §§ 227, et seq. pursuant to 47 U.S.C. § 227(b)(3)(C);
- An award of attorneys' fees and costs to counsel for Plaintiff and the Class;
- Pre-judgment and post-judgment interest on monetary relief; and
- All other and further relief as the Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

135. Plaintiff, individually and on behalf of the Class, demands a jury trial on all issues so triable.

Dated: May 29, 2024

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By:

ABBAS KAZEROUNIAN, Esq.
DAVID J. MCGLOTHLIN, Esq.
MONA AMINI, Esq.
GUSTAVO PONCE, Esq.
Attorneys for Plaintiff

